IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 44 OF 2000.

Shri Aveline J. Pinto,
6, Zoglem Bhat, Paliem,
Ucassaim, Bardez Goa. ... Applicant.

Versus

1. Shri Wilson D'Souza,
   Canca Wado, Duler,
   Mapusa, Goa.
2. State. ... Respondents.

Mr. S.G. Bhobe, Amicus Curiae for the Applicant.

Mr. A.P. Lawande, Advocate for the Respondent No. 1.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent State.

Coram : P.V. HARDAS, J

Date : 12th June 2003.

ORAL JUDGMENT.

This Criminal Revision Application has been filed by the original complainant, assailing the acquittal of the respondent no. 1/accused for offences punishable under Sections 341, 342, 376 and 506 of the Indian Penal Code, passed by the IInd Additional Sessions Judge, Panaji, in Sessions Case No. 22 of 1998, by Judgment dated 19th April 2000. The applicant is the original complainant, who had been examined as P.W.13 in the said trial.

2. A reference to the facts may briefly be made. The prosecution alleged that during the night of 25th October 1995 and the morning of 26th October 1995 the

accused procured the presence of the prosecutrix, P.W.15, a minor girl, in his house, at Duler, Mapusa on the pretext of watching movie on television and thereby wrongly restrained the minor girl, confining her to the room by bolting the door from inside and committed rape on her.

3. Charge for the aforesaid offences was framed by the learned trial Court. The accused pleaded not guilty and claimed to be tried. The defence of the accused in the trial Court was that he was falsely implicated in the case by the father of the prosecutrix, that is the complainant, on account of a dispute of a plot of land which belonged to the accused and his two aunts. The learned trial Court, by giving benefit of doubt to the accused, acquitted him.

4. The learned trial Court while appreciating the evidence of the prosecutrix observed as follows:-

> "The defence have also brought forth a possibility that Avelino P.W.13 on account of this enimical relations has used the victim girl as a bait to frame the accused and that Avelino P.W.13 would stand nothing to lose, the victim girl not being his natural child and the victim girl having much to lose being taken in adoption from an orphanage."

The learned trial Court has further observed, on appreciation of evidence, that "when her evidence is

considered in its totality, serious doubt is created about the entire incident as narrated by her and when seen in the context of unexplained and unaccounted delay in lodging of the complaint."

In the same paragraph the learned trial Court has also observed:-

> "that a possibility could not be ruled out that P.W.13 Avelino had used the victim girl to ensnare the accused."

5. The learned trial Court, after appreciating the evidence of the medical officers and the sister of the prosecutrix, has recorded a finding that the respondent no. 1/accused was entitled to benefit of doubt and, hence, acquitted him.

6. This is a revision against acquittal and it is impermissible for this Court to re-appreciate the evidence. The State has chosen not to file an appeal. The Apex Court in **Akalu Ahir v. Ramdeo Ram,** (1973) 2 SCC 583, has laid down certain instances in which interference of the High Court in cases of acquittal would be justified. The said illustrations are (i) where the trial Court has no jurisdiction to try the case, but has till acquitted the accused; (ii) where the trial Court has wrongly shut out evidence which the prosecution wished to produce; (iii) where the

appellate Court has wrongly held the evidence which was admitted by the trial Court to be inadmissible; (iv) where the material evidence has been overlooked only (either) by the trial Court or by the appellate Court; and (v) where the acquittal is based on the compounding of the offence which is invalid under the law.

7. Since this is a revision against acquittal, this Court cannot re-appreciate evidence and disturb the finding of fact recorded by the learned trial Court. The case at hand does not suffer from any of the defects which have been referred to by the Supreme Court in Akalu Ahir v. Ramdeo Ram's case (supra). I have perused the Judgment of the learned trial Court and I have heard Mr. Bhobe, the learned counsel who has been appointed as Amicus Curiae for the applicant and Mr. Lawande, the learned counsel for the respondent no. 1/accused and I do not find any procedural illegality or any manifest error of law in the Judgment of the learned trial Court acquitting the respondent no. 1/accused. The grounds for assailing the Judgment of the learned trial Court centre around appreciation of evidence. As stated earlier, it is impermissible for this Court in a revision against acquittal to re-appreciate the evidence and disturb the finding of acquittal.

8. In view of this, the present revision does not

call for any interference and the same is devoid of any substance and deserves to be dismissed.

9. In view of this, Criminal Revision Application is dismissed.

(P.V. HARDAS)
JUDGE.

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